

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 CRIMINAL APPLICATION NO.1614 OF 2021

**AKASH RAM FATROD AND ANR
VERSUS
THE STATE OF MAHARASHTRA**

Mr. B. R. Waramaa, Advocate for the applicants
Mrs. R. P. Gaur, APP for the respondent/State

CORAM : N. R. BORKAR, J.

DATE : 26-11-2021

P. C.

. This application takes an exception to the order dated 16-06-2021 passed by the learned Additional Sessions Judge, Amalner below Exh. 12 in Sessions Case No. 135 of 2019.

2. The applicants who are accused in the aforesaid sessions case and are facing trial for the offences punishable under Sections 307, 326, 341 504, 506 read with Section 34 of the Indian Penal Code and Section 4/25 of the Arms Act so also Section 37(1)(3) of the Bombay Police Act has moved an application for discharge. The learned trial court rejected the said application by the order impugned.

3. The allegations against the present applicants are that they have assaulted the injured by sword and iron pipe.

4. I have heard learned counsel for the applicants and the learned APP for the respondent/State. The learned counsel for the applicants submits that according to the injured he was assaulted by sword. It is submitted that the alleged sword came to be seized, however, seizure panchanama does not disclose blood stains on the sword. It is submitted, the investigating officer has not sent the sword for forensic examination. It is submitted that, thus the allegations in respect of assault by sword are not supported by corroborative evidence. It is submitted that thus, the charge under Section 307 of IPC is groundless and applicants needs to be discharged from the said charge.

5. I have perused the charge-sheet.

6. Admittedly, the applicants are not seeking discharge from other offences for which they are

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facing trial except Section 307 of the IPC. According to the statement of the injured, he was assaulted by sword and iron pipe. The determinative factor for constituting the offence under Section 307 of the IPC is the intention and not the injury. Blood stains were not there on the sword or the Investigating Officer has not sent the sword for forensic examination cannot be gone into at this stage.

7. Considering the fact that the assault was made by the sword and iron pipe, no interference is called for in the order impugned. The application is dismissed.

[N. R. BORKAR, J.]

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